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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Kesayoshi IGUCHI et al.

Serial No. 09/488,527

Art Unit: 3627

Filed: January 21, 2000

Examiner: Rudy, Andrew Joseph

For: A METHOD OF PROCESSING  
CUSTOMER'S ORDERS AND A  
CUSTOMER'S ORDER  
PROCESSING APPARATUS

Atty Docket: 0102/0095

TRANSMITTAL OF PETITION FEE

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

Sir:

The Commissioner is hereby authorized to debit the Petition Fee of \$130.00 from Deposit Account No. 50-0501.

The Commissioner is hereby further authorized to debit funds from Deposit Account No. 50-0501 if the amount shown above is insufficient. Conversely, any overpayment should be credited to the same account. A duplicate copy of this Transmittal Letter is attached herewith.

Respectfully submitted,

Louis Woo, Reg. No. 31,730  
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717 North Fayette Street  
Alexandria, Virginia 22314  
Phone: (703) 299-4090

Date: May 30, 2006

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**PETITION FILED PURSUANT TO 37 C.F.R. 1.181(a)(3)**

05/31/2006 JADD01 00000143 500501 09488527  
01 FC:1464 130.00 DA

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

Sir:

Applicants hereby petition the director of Art Unit 3627 to invoke his supervisory authority to prevent the examiner in charge of this case to further reopen prosecution of this case by the sending out yet another Office Action, so that the appeal of the rejections by the examiner may proceed to the Board of Appeals for a decision. Alternatively, the director is respectfully requested to replace the examiner in charge of this case with another examiner, as the examiner now in charge of this case has unnecessarily prolonged the prosecution of this case and, at least as it appears to applicants, prevented this case from proceeding to the Board of Appeals.

The facts supporting this Petition are as follows:

(1) Application No. 09/488,527 was filed on January 21, 2000. Claims 1-31 were presented for prosecution.

(2) A first Office Action dated October 23, 2001 rejected claims 1-31 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, and rejected the claims under 35 U.S.C. 102 and 35 U.S.C. 103, relying on Savage (US 6,026,372).

(3) An amendment filed on January 10, 2002 amended claims 1, 2, 3, 7, 9, 10 and 31 and added new claim 32. The specification was amended and the various rejections were traversed.

(4) A second Office Action dated April 11, 2002 (which replaces an Office Action sent on February 27, 2002) finally rejected claims 1-33. The second Office Action objected to the Abstract and rejected claims 1-33 over Savage and any one of related Cahlandar patents (US 4,922,435, US 5,132,914 and US 5,172,328).

(5) A 37 C.F. R. 1.116 amendment was filed on April 26, 2002. In this amendment, typographical errors in the specification were amended. In addition, a substitute abstract required by the examiner was submitted. Remarks were made to distinguish the claimed invention from the prior art. No claims were amended.

(6) An Advisory Action dated June 14, 2002 entered the Rule 116 Amendment, but maintained the rejection of claims 1-33.

(7) A Notice of Appeal was filed on August 8, 2002 appealing the examiner's rejection of claims 1-33.

(8) A first Appeal Brief was filed on September 30, 2002. In the Appeal Brief, those claims that were deemed to be at issue by the applicants were set forth in the Summary of the Invention section to include the pages of the specification, the support for the different steps for the method claims, and the appropriate legends for the elements defined in the apparatus claims.

(9) A third Office Action dated December 10, 2002 reopened the prosecution of the case. The only difference between the third Office Action and the

second Office Action was the addition of a 35 U.S.C. 101 rejection of claims 1-15, 31 and 32, the examiner arguing that those method claims are “merely an abstract idea without a practical application.”

(10) After the filing of a second Notice of Appeal on March 4, 2003, a second Appeal Brief was filed on May 2, 2003 responding to the newly added 35 U.S.C. 101 rejection, as well as responding to the 35 U.S.C. 103 rejection.

(11) A Notification dated June 25, 2003 sent by the examiner informed the applicants that the first Appeal Brief “does not provide (a) reason(s) for each claim, as set forth in 37 CFR 1.192(c)(7). Appellant’s brief discusses independent claims 1, 16, 31, 32 and 33, and some dependent claims, e.g. 2, 3, 5, but does not discuss each dependent claim and does not give reasons for each claim as required, see 37 CFR 1.192(d).” Page 2 of the Notification.

(12) A third Appeal Brief, revising the second Appeal Brief so as to be fully responsive to the requirements set forth by the examiner in his non-compliance notification of June 25, 2003, was filed on July 22, 2003.

(13) A formal Status Inquiry was filed on August 12, 2004. Not receiving any response to the formal Status Inquiry, a number of telephone messages were left with the examiner by the assistant of the undersigned in 2005. The undersigned has record indicating that messages were left with the examiner regarding the status of the case at least on July 15, 2005 and July 27, 2005.

(14) The assistant of the undersigned spoke to the examiner on October 6, 2005. The examiner replied that he will send out an Examiner’s Answer by November 1, 2005.

(15) The assistant of the undersigned further spoke with the examiner on November 16, 2005. The examiner answered that hopefully his Answer to the third Appeal Brief will be sent out on December 15, 2005.

(16) The undersigned left a message with the examiner on January 6, 2006. The examiner returned the call and informed the undersigned that the instant case

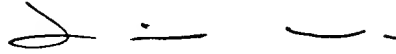
“will be the first case that he will take care of in the next pay period”, which the examiner mentioned as being January 15, 2006.

(17) A fourth Office Action dated January 26, 2006 reopened the prosecution of the case. In this Office Action, in addition to maintaining the 35 U.S.C. 101 and 35 U.S.C. 103 rejections, the examiner has additionally rejected claims 1-33 under 35 U.S.C. 112, 1<sup>st</sup> paragraph and also under 35 U.S.C. 112, 2<sup>nd</sup> paragraph. The basis for the examiner’s 35 U.S.C. 101 and 35 U.S.C. 103 rejections remained the same.

In view of the above, it is appellant’s belief that the examiner has unnecessarily prolonged the prosecution of the instant case, without allowing the applicants to seek a resolution of this case with the Board of Appeals. By repeatedly reopening the prosecution of the case and by taking an extraordinary long time to respond to the third Appeal Brief (more than 2½ years), applicants believe that the examiner is decreasing the value of the patent to issue from this application, if indeed this application were to mature to a patent, as this application was filed on January 21, 2000, which is before the date that the adjustment of patent term under 35 U.S.C. 154(b) became effective.

Accordingly, the director is respectfully requested to order the examiner to proceed with the preparation of an Examiner’s Answer in response to the Appeal Brief being filed concurrently herewith so that this case may proceed to the Board of Appeals for adjudication of the outstanding issues raised by the examiner, if the examiner continues to believe his rejections to be meritorious. Alternatively, if the examiner were unable to prepare an Examiner’s Answer in response to the being filed Appeal Brief in an acceptable time frame, the director is respectfully requested to remove the examiner currently in charge of this case and replace him with a new examiner to better expedite the prosecution of this case.

Respectfully submitted,



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Date: May 30, 2006